

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
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Implementation of Section 103 of)
the Communications Assistance for)
Law Enforcement Act)
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MAR 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JOINT MOTION TO DISMISS

CTIA'S JULY 16, 1997 PETITION FOR RULEMAKING

1. The Department of Justice and the Federal Bureau of Investigation (FBI), on behalf of themselves and other federal, state, and local law enforcement agencies, hereby move for an order dismissing the Cellular Telecommunications Industry Association's (CTIA's) July 16, 1997 Petition for Rulemaking.¹ This motion is made pursuant to Sections 1.2 and 1.401(e) of the Federal Communications Commission Rules on the grounds that CTIA's petition is now moot and plainly does not warrant the attention of the Commission. 47 C.F.R. §§ 1.2 and 1.401(e).

I. BACKGROUND

2. On July 16, 1997, CTIA filed a Petition for Rulemaking requesting that the Commission

¹ CTIA's petition has not yet been assigned a docket number.

establish an electronic surveillance technical standard to implement Section 103(a) of the Communications Assistance for Law Enforcement Act (CALEA),² 47 U.S.C. § 1002(a). The petition stated that no industry standard had been adopted at that time because of an impasse between the industry and law enforcement over the capabilities that should be incorporated into the standard. CTIA requested that the Commission adopt as the standard the then-current industry consensus document which it attached to the petition.

3. The substantive legal basis for CTIA's petition was Section 107(b) of CALEA, 47 U.S.C. § 1006(b). That provision states that if industry associations or standard-setting organizations "fail to issue" technical requirements or standards, then the Commission may be petitioned to establish those standards. As of the date of the petition -- July 16, 1997 -- CTIA was correct in alleging that there was a failure on the part of industry and standard-setting organizations to issue technical requirements or a standard, as none existed.

4. However, on December 8, 1997, the premise for CTIA's petition ceased to exist. On that date, members of the telecommunications industry approved interim standard J-STD-025, despite its failure to include the assistance capabilities that law enforcement had consistently maintained were required by Section 103(a) of CALEA, 47 U.S.C. § 1002(a). The standard was then published by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications

² The Communications Assistance for Law Enforcement Act, Pub L. No. 103-414, 108 Stat. 4270 (1994) (codified as amended in 18 U.S.C. and 47 U.S.C.).

Industry Solutions.³

II. DISCUSSION

CTIA'S PETITION IS MOOT AND DOES NOT WARRANT

CONSIDERATION BY THE COMMISSION.

5. CTIA's petition should be dismissed on the grounds that it is moot and does not warrant consideration by the Commission. Section 1.1401(e) of the Commission rules provides:

Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

47 C.F.R. § 1.401(e).

A matter is moot when it presents no actual controversy or where the issues have ceased to exist.⁴

Here, CTIA's petition was premised on the fact that no industry standard had been adopted at the time of its filing. After CTIA filed its petition, industry did adopt a standard. It thereby rendered CTIA's petition moot.

6. For the same reasons that the petition is moot, CTIA's petition should also be dismissed on the grounds that "it does not warrant consideration by the Commission."⁵ In addition, CTIA's petition does not warrant consideration by the Commission in light of the Joint Petition for

³ See Attachment A.

⁴ BLACKS LAW DICTIONARY 1008 (6th Ed. 1990) (defining "moot case").

⁵ 47 C.F.R. § 1.401(e).

Expedited Rulemaking being filed separately by the Department of Justice and the FBI on behalf of law enforcement. The Joint Petition for Expedited Rulemaking alleges and demonstrates that the interim industry standard is "deficient" as that term is used in Section 107(b) of CALEA. In light of events that have taken place since the filing of CTIA's petition, the petition filed by the Department of Justice and the FBI supersedes CTIA's petition in terms of relevancy and accuracy. There is simply no reason to keep CTIA's outdated petition pending.

III. CONCLUSION

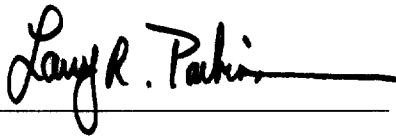
7. For the foregoing reasons, the Department of Justice and the FBI respectfully request that CTIA's July 16, 1997, Petition for Rulemaking be dismissed.

Date: March 27, 1998

Respectfully submitted,

Louis J. Freeh, Director
Federal Bureau of Investigation

Honorable Janet Reno
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Before the
Federal Communications Commission
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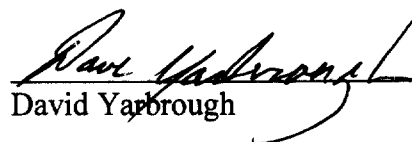
Certificate of Service

In the Matter of:)
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Implementation of Section 103 of)
the Communications Assistance for Law)
Enforcement Act)
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_____)

I, David Yarbrough, a Supervisory Special Agent in the office of the Federal Bureau of Investigation (FBI), 14800 Conference Center Drive, Suite 300, Chantilly, Virginia 20151, hereby certify that, on March 27, 1998, I caused to be served, by first-class mail, postage prepaid (or by hand where noted) copies of the herewith Motion to Dismiss in the above-referenced proceeding, the original of which is filed herewith and upon the parties identified on the attached service list.

DATED at Chantilly, Virginia this 27th day of March, 1998.


David Yarbrough

**In the Matter of
Implementation of Section 103 of the
Communications Assistance for Law Enforcement Act**

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